

1 **VILLAGE OF ESTERO, FLORIDA**

2  
3 **ORDINANCE NO. 2016 - 08**

4  
5 **AN ORDINANCE OF THE VILLAGE COUNCIL OF THE**  
6 **VILLAGE OF ESTERO, FLORIDA, APPROVING A**  
7 **REZONING FROM AGRICULTURAL DISTRICT (AG-2)**  
8 **AND COMMERCIAL PLANNED DEVELOPMENT**  
9 **DISTRICT (CPD) TO ESTERO PLANNED**  
10 **DEVELOPMENT DISTRICT (EPD) TO ALLOW A 205**  
11 **UNIT MULTIFAMILY RESIDENTIAL PROJECT WITH**  
12 **ASSOCIATED AMENITIES FOR PROPERTY LOCATED**  
13 **AT 9050 CORKSCREW ROAD CONSISTING OF**  
14 **APPROXIMATELY 16.95 ACRES; DENYING THE**  
15 **APPLICATION FOR A REZONING TO RESIDENTIAL**  
16 **PLANNED DEVELOPMENT DISTRICT (RPD);**  
17 **APPROVING A MASTER CONCEPT PLAN, CERTAIN**  
18 **DEVIATIONS AND CONDITIONS OF DEVELOPMENT;**  
19 **PROVIDING FINDINGS; DENYING THE APPLICATION**  
20 **FOR A COMPREHENSIVE PLAN AMENDMENT FROM**  
21 **SUBURBAN LAND USE CATEGORY TO INTENSIVE**  
22 **DEVELOPMENT LAND USE CATEGORY; PROVIDING**  
23 **FOR CONFLICTS; PROVIDING FOR SEVERABILITY;**  
24 **AND PROVIDING AN EFFECTIVE DATE.**  
25

26 **WHEREAS,** Genova LLC (the “Applicant”, to include successors and assigns) filed  
27 applications to amend the Transitional Comprehensive Plan Future Land Use designations and  
28 to amend the zoning districts for a property located at 9050 Corkscrew Road (at the southeast  
29 corner of Corkscrew Road and Via Coconut Point), Estero, FL, consisting of approximately  
30 16.95 acres (the “Property”); and  
31

32 **WHEREAS,** the Property consists of parcels with STRAP numbers 34-46-25-E1-  
33 U1981.2358, 34-46-25-E1-0100C.0350, 34-46-25-E1-0100C.035B, 34-46-25-E1-  
34 0100C.035C, 34-46-25-E1-0100C.035D, 34-46-25-E1-0100C.035E, 34-46-25-E1-  
35 0100C.035G, 34-46-25-E1-0100C.035A and 34-46-25-E1-U1991.2358, and the Property is  
36 legally described in Exhibit A attached hereto; and  
37

38 **WHEREAS,** the Applicant requested an amendment to the Transitional  
39 Comprehensive Plan Future Land Use designations from the currently designated Suburban  
40 Land Use Category to the Intensive Development Land Use Category; and  
41

42 **WHEREAS,** the Village has subsequently amended the Future Land Use designation  
43 of the Property to Village Center; and  
44

45           **WHEREAS**, the Applicant requested rezonings from Agricultural District (AG-2) and  
46 Commercial Planned Development District (CPD) to Residential Planned Development  
47 District (RPD); and  
48

49           **WHEREAS**, the Village Center Land Use Category provides that in order for the  
50 Property to develop at the requested density that it be rezoned to the Estero Planned  
51 Development District; and  
52

53           **WHEREAS**, the Applicant has requested certain deviations to the Estero Planned  
54 Development District regulations pursuant to the Estero Transitional Land Development Code,  
55 as amended; and  
56

57           **WHEREAS**, the public information meeting for the Transitional Comprehensive Plan  
58 Amendment and Rezoning was held at the Planning and Zoning Board on June 16, 2015; and  
59 a duly noticed public hearing was held on May 3, 2016 and continued to June 22, 2016, and  
60 the Planning and Zoning Board recommended approval with conditions of the request,  
61 including certain deviations; and  
62

63           **WHEREAS**, a duly noticed first reading was held before the Village Council on June  
64 29, 2016; and  
65

66           **WHEREAS**, a duly noticed second reading and public hearing was held before the  
67 Village Council on \_\_\_\_\_, 2016, at which time the Village Council gave consideration to  
68 the evidence presented by the Applicant and the Village staff, the recommendations of the  
69 Planning and Zoning Board and the comments of the public.  
70

71           **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,  
72 Florida:  
73

74           **Section 1.      Adoption of Recitals.**  
75

76           The Village Council hereby adopts the foregoing recitals and incorporates them as a  
77 part of this Ordinance.  
78

79           **Section 2.      Rezoning.**  
80

81           The Village Council approves the rezoning of the Property from Agricultural District  
82 (AG-2) and Commercial Planned Development District (CPD) to Estero Planned Development  
83 District (EPD), to allow a maximum of 205 multifamily residential units not to exceed 45 feet  
84 or 4 stories maximum (3 stories over parking), subject to the following conditions and  
85 deviations.  
86

87           **Section 3.      Conditions.**  
88

- 89           1.      Master Concept Plan/Development Parameters

The development of this project must be consistent with the Master Concept Plan for “Genova”, dated last revised December 7, 2015, attached as Exhibit B, except as modified by the conditions below. This development must comply with all requirements of the Village of Estero Transitional Land Development Code (LDC) at time of local Development Order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

Issuance of a development permit by the Village of Estero does not in any way create any rights on the part of the Applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the Village for issuance of the permit if the Applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertake actions that result in a violation of state or federal law.

The project is approved for 205 multi-family units with a maximum building height of 4 stories/45 feet.

## 2. Uses and Site Development Regulations

The following limits apply to the project and uses:

- a. Schedule of Uses – See Exhibit C
- b. Property Development Regulations – See Exhibit D

## 3. Open Space

The local development order must include a minimum of 40% open space within the approved planned development.

## 4. Buffers

Buffers must be consistent with the requirements of the Village of Estero Land Development Code, as shown on the Master Concept Plan, except as granted by deviation as part of this rezoning action.

## 5. Pedestrian Connections to Estero Community Park

Pedestrian connections and sidewalks will be provided as shown on the Master Concept Plan and will be constructed prior to the approval of the first certificate of compliance for the development order.

## 6. Traffic Conditions

Connections to Corkscrew Road and to Via Coconut Point are subject to the review and approval of the Lee County Department of Transportation, unless the road is turned over to the Village of Estero for maintenance.

135 7. Vehicular/Pedestrian Impacts

136  
137 Approval of this zoning request does not address mitigation of the project's vehicular  
138 or pedestrian traffic impacts. Additional conditions consistent with the Village of  
139 Estero LDC may be required to obtain a local development order.  
140

141 8. Transitional Comprehensive Plan

142  
143 Approval of this zoning request does not guarantee local development order approval.  
144 Future development order approvals must satisfy the requirements of the Transitional  
145 Comprehensive Plan Planning Communities Map and Acreage Allocation Table, Map  
146 16 and Table 1(b), as may be amended from time to time.  
147

148 9. Concurrency

149  
150 Approval of this rezoning does not constitute a finding that the proposed project meets  
151 the concurrency requirements set forth in LDC Chapter 2 and the Village of Estero  
152 Transitional Comprehensive Plan. The developer is required to demonstrate  
153 compliance with all concurrency requirements prior to issuance of a local development  
154 order.  
155

156 10. Agricultural Uses

157  
158 Agricultural Uses: Existing bona fide agricultural uses on this site are allowed:  
159

160 (a) Bona fide agricultural uses consisting of row crops that were in  
161 existence when the application for this project was filed may continue in the  
162 areas depicted on Exhibit E until a local development order is approved for the  
163 area containing the agricultural uses.  
164

165 (b) Clearing or injury of native trees or other native vegetation, including  
166 understory, in agricultural areas is prohibited. Existing areas of bona fide  
167 agricultural use that include existing grass pasture(s) may be mowed but those  
168 areas may not be cleared or expanded. Violations of this condition will require  
169 restoration in accordance with LDC 10-423. This prohibition of clearing or  
170 expansion of agricultural use is not intended to preclude Village approved  
171 requests for removal of invasive exotic vegetation.  
172

173 (c) Prior to issuance of a local development order for the portion that  
174 contains the agricultural use, the property owner must provide written proof,  
175 subject to approval by the Village Attorney of the following:

176 (1) Termination of all agricultural use on the property included in  
177 the development order application/approval. Proof must include a sworn  
178 affidavit from the person or entity holding title to the property that  
179 specifically provides:

- 180
- 181 (a) the date the agricultural uses ceased;
- 182
- 183 (b) the legal description of the property subject to the development
- 184 order approval;
- 185
- 186 (c) an affirmative statement that the owner acknowledges and
- 187 agrees that all agricultural uses are illegal and prohibited on the property
- 188 and that the owner covenants with the Village that they will not allow
- 189 agricultural uses on the property until the property is re-zoned to permit
- 190 agricultural uses; and ,
- 191
- 192 (d) that the affidavit constitutes a covenant between the owner and
- 193 the county that is binding on the owner, their assignees and successors
- 194 in interest.

195

196 The affidavit must be properly recorded in the public records of the

197 county at the owner's expense.

198

- 199 (2) Proof of termination of the agricultural tax exemption for the
- 200 portion of the property included in the development order
- 201 application/approval. Proof of termination must include a copy of the
- 202 owner's request to terminate the tax exemption provided to the Property
- 203 Appraiser.
- 204

205 11. Solid Waste Management

206

207 As part of any local development order approval for vertical development, the

208 development order plans must include facilities in compliance with LDC Section 10-

209 261 and Solid Waste Ordinance #11-27 for the pick-up/disposal of solid waste and

210 recyclables. The minimum area required for, and specific locations of, these facilities

211 will be reviewed at the time of local development order application.

212

213 12. Pattern Book

214

215 This project must be developed in substantial compliance with the Genova Pattern

216 Book dated 6/17/15. The Pattern Book will be reviewed by the Design Review Board

217 and may be required to be amended pursuant to that review, prior to issuance of any

218 development order.

219

220 13. Gates and Walls

221 Gates and walls will be designed per the Master Concept Plan as "stealth" and will not

222 be visible from the roadway.

223

224

225 14. Incentive Offerings

226  
227 The Applicant's incentive offerings, at the time by which each offering must be  
228 completed, are incorporated into this zoning approval as Exhibit F. Location and  
229 details are shown on the Master Concept Plan and in the Pattern Book.  
230

231 15. Maintenance

232  
233 The Applicant will maintain the linear park, pocket park and median landscaping of  
234 Via Coconut Point in perpetuity from Corkscrew Road to the proposed new entrance  
235 to Estero Community Park. The linear park must be constructed prior to the issuance  
236 of a Certificate of Occupancy for the buildings adjacent to the linear park. The median  
237 landscaping, which will extend from Corkscrew Road to the proposed new entrance to  
238 the Community Park, must be completed prior to the approval of the first Certificate of  
239 Compliance for the development order.  
240

241 16. Cash Contribution

242  
243 The cash contribution offered by the Applicant for a future park entry road will be  
244 provided prior to issuance of the building permit for the third residential building. The  
245 funds will be deposited into a Village escrow account as approved by the Village  
246 attorney.  
247

248 17. Public Park Disclosure.

249  
250 The owner shall provide disclosure on sale documents for unit owners that the project  
251 is located next to a public park with potential for events that include noise and  
252 congestion.  
253

254 18. Vacation of Easements.

255  
256 The Applicant must obtain approval from the Village Council of the vacation of the  
257 following easements:  
258

259 (a) A R.O.W. Easement located along the southerly side of Corkscrew  
260 Road and within the northeasterly section of the property. This R.O.W.  
261 Easement is 60 feet in width and extends to a length of approximately 1300±  
262 feet; and

263 (b) A R.O.W. Easement located and set back from the southerly property  
264 line. The width at this R.O.W. Easement varies from 25 to 30 feet and extends  
265 to a length of approximately 60 feet from the southeast corner to the southwest  
266 corner of the property.  
267  
268  
269

**Section 4.     Deviations.**

1.     Deviation from LDC Section 33-403 which requires that buildings must have a maximum setback of 25 feet from Corkscrew Road ROW, to allow a building setback of 30.7 feet is approved.
2.     Deviation from LDC Section 33-351 which requires a 20 foot Type D Buffer for Multi-Family Development adjacent to right-of-ways, to allow a 10 foot buffer along a portion of Via Coconut Road adjacent to Building 3 and 5, as shown on the Master Concept Plan, is approved.
3.     Deviation from LDC Section 10-285 which requires driveway connections on arterial roads to have a minimum separation of 660 feet, to allow a driveway separation of 350 feet for the egress onto Corkscrew Road, is approved subject to it being found acceptable by Lee County DOT.
4.     Deviations from LDC Section 10-329(d)(1)a. as follows:
  - (a)     Stormwater management lakes to be setback 25 feet from proposed local streets, to allow a setback of 0 (zero) feet for the internal local road; and
  - (b)     Stormwater management lakes to be setback 50 feet from collector roads to allow stormwater management lakes to be setback 25 feet from Via Coconut Point, are approved, conditioned on the Applicant providing certification by a professional engineer at the time of the development order that the proposed structures on the roadways provide adequate traffic safety for wayward vehicles.
5.     Deviation from LDC Section 10-418(3)a which states that water management lakes may have a maximum of 20% of hardened shoreline to allow:
  - (a)     Lake 1 to have a maximum of 35% of hardened lake shoreline;
  - (b)     Lake 2 to have a maximum of 35% of hardened lake shoreline;
  - (c)     Lake 3 to have a maximum of 35% of hardened lake shoreline;is approved.
6.     Deviations from LDC Section 34-1748 as follows:
  - (a)     Entrance gates be located a minimum of 100 feet from the existing intersecting street, to allow the gates to be located 85± feet from the intersecting street;
  - (b)     The gate to be designed in such a manner to allow a minimum of five vehicles to safely pull-off the intersecting street while waiting to enter, to allow a minimum of four vehicles to safely pull-off the intersecting street while waiting to enter;

(c) A paved turn-around, having a turning radius sufficient to accommodate a U-turn for a single unit truck vehicle per the AASHTO Green Book must be provided on the ingress side of the gate, to allow a turn-around to be provided after the gate; are denied.

7. Deviation from LDC Section 34-2020 which requires a total of 36 parking spaces for the amenity center, to allow for a minimum of 26 parking spaces to be provided, is approved.

8. Deviation from LDC Section 33-229 which limits building heights outside of the Interstate Highway Interchange Area to three stories or 45 feet, whichever is less, to allow:

(a) A maximum height of 45 feet measured to the eave of the roof; and

(b) A maximum of 4 stories, with 3 stories of residential uses over a ground floor of parking; is approved.

9. Deviation from LDC Section 10-296(i)(2) which requires a minimum 24 foot wide pavement width for Category B roads with curb-and-gutter drainage, to allow a pavement width of 20 feet, is approved, conditioned on the use of pavers on all pavement surfaces and conditioned on the Applicant providing certification by a professional engineer at the time of the development order that the proposed road design provides adequate traffic safety for wayward vehicles.

10. Deviation from LDC Section 34-1743 which requires perimeter fences and walls to be setback 7.5 feet from the right-of-way, to allow a setback of 3.5 feet for a portion of the perimeter railing adjacent to Building 3, is approved.

11. Deviation from LDC Section 10-415 which requires a multi-family residential development to provide a minimum of 40% open space, to allow a minimum open space of 35%, is denied.

12. Deviation from LDC Section 34-935(b)(1)e which requires buildings to be setback from the perimeter of the project a minimum of one-half the height of the building, to allow a building setback of 18 feet for a small portion of the southeast corner of Building 4 which has a maximum height of 45 feet, is approved.

13. A deviation from Section 33-508(b)(2) and Figure 33-508(b) as proposed, which identifies connecting streets within an overall Framework Plan described in Division 6, to allow for private streets within the project is approved.

14. A deviation from Section 10-296(d), specifically 10-296(i)(2) to allow for a minimum of 20 feet from inside edge to inside edge of curbs for internal, private access drives, is approved, conditioned on the Applicant providing certification by a professional engineer at the time of the development order that the proposed design of



access drives provides adequate traffic safety for wayward vehicles. Minimum ROW widths shall not apply.

**Section 5. Comprehensive Plan Amendment.**

Applicant's request to amend the Transitional Comprehensive Plan Future Land Use designation from the Suburban category to Intensive Development category is denied.

**Section 6. Rezoning.**

Applicant's request to rezone the property from Agricultural and Community Planned Development to Residential Planned Development, is denied.

**Section 7. Findings and Conclusions.**

Based on the evidence in the record and its analysis of the relevant Transitional Comprehensive Plan goals, objectives and policies, Transitional Land Development Code regulations, and codes and regulations, the Village Council makes the following findings and conclusions.

1. The Applicant qualifies for rezoning by demonstrating compliance with the Transitional Comprehensive Plan for the Village Center, the Transitional Land Development Code, and other applicable codes and regulations.
2. The rezoning is consistent with the densities, intensities and general uses set forth in the Transitional Comprehensive Plan.
3. The application meets the standards for a Tier 2 density of 12.1 units per acre, based on the criteria for achieving the base density, and the Applicant's incentive offers.
4. The request as conditioned, is compatible with existing or planned uses in the surrounding area.
5. Approval of the request will increase traffic but not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development.
6. The request will not adversely affect environmentally critical area and natural resources.
7. Urban services, as defined in the Transitional Comprehensive Plan, are, or will be, available and adequate to serve the proposed land use.
8. The proposed use, as conditioned, is appropriate at the subject location.

9. The recommended conditions to the Master Concept Plan and other applicable regulations provide sufficient safeguards to the public interest.

10. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

11. The deviations recommended for approval:

- (a) Enhance the planned development; and
- (b) Preserve and promote the general intent of the LDC to protect the public health, safety and welfare.

12. In accordance with Section 33-518(b) of the Land Development Code, the Village has determined that the Applicant's incentive offers:

- (1) (meet)(do not meet) the goals and objectives of the comprehensive plan.
- (2) (meet)(do not meet) the General Criteria under Sec. 33-502, and
- (3) (create)(do not create) significant public benefit commensurate with the value of such incentive offers to the Village, and the appropriateness of such incentive offers to the applicable Tier and to the particular development plan.

#### **Section 8. Exhibits.**

The following exhibits are attached to this Ordinance and incorporated by reference:

- Exhibit A Legal Description
- Exhibit B Master Concept Plan
- Exhibit C Schedule of Uses
- Exhibit D Property Development Regulations
- Exhibit E Agricultural Affidavit
- Exhibit F Applicant's Incentive Offerings and Pattern Book

#### **Section 9. Conflicts.**

All sections or part of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance shall be repealed to the extent of such conflict upon the effective date of this Ordinance.

#### **Section 10. Severability.**

Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance subsequent to its effective date be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion thereof, other than the part so declared to be invalid.

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**Section 11.    Effective Date.**

This Ordinance shall be effective on the date the Comprehensive Plan Amendment CPA2016-01 adopted by Ordinance 2016-04 becomes effective.

**PASSED** on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Attest:

**VILLAGE OF ESTERO, FLORIDA**

By: \_\_\_\_\_  
Kathy Hall, MMC, Village Clerk

By: \_\_\_\_\_  
Nicholas Batos, Mayor

Reviewed for legal sufficiency:

By: \_\_\_\_\_  
Nancy E Stroud,  
Village Land Use Attorney

Vote:	AYE	NAY
Mayor Batos	_____	_____
Vice Mayor Levitan	_____	_____
Councilmember Boesch	_____	_____
Councilmember Brown	_____	_____
Councilmember Errington	_____	_____
Councilmember Ribble	_____	_____
Councilmember Wilson	_____	_____